

REPORT TO THE COMMISSION PURSUANT TO SECTION 200.520 OF THE RULES
OF PRACTICE OF THE ILLINOIS COMMERCE COMMISSION

Docket No: 00-0592

S O M: 7/5/01

Deadline: N/A

MEMORANDUM

TO: The Commission

FROM: Eve Moran and Leslie Haynes, Administrative Law Judges

DATE: June 27, 2001

SUBJECT: Illinois Bell Telephone Company, AT&T Communications of Illinois, Inc., CoreComm Illinois, Inc., Covad Communications Company, MCI, WorldCom Communications, Inc. McLeodUSA Telecommunications Services, Inc. NEXTLINK Illinois, Inc., NorthPoint Communications, Inc., Rhythms Netconnections and Rhythms Links, Inc., 21st Century Telecom of Illinois, Inc., Ushman Communications, Inc., and Sprint Communications Company L.P. d/b/a Sprint Communications L.P

Joint Submission of the Amended Plan of Record for Operations Support Systems ("OSS").

Petition for Interlocutory Review

RECOMMENDATION: Deny Petition for Interlocutory Review.

The Instant Action:

On June 18, 2001, Covad Communications Company ("Covad") and AT&T Communications of Illinois, Inc. ("AT&T") filed a Petition for Interlocutory Review of Hearing Examiners' May 29, 2001 Ruling on Confidentiality of Covad Ex. 5.0.

Thereafter on June 25, 2001, Ameritech Illinois filed a pleading in Opposition.

Background:

By Commission order, a rehearing on Issue 29/31 (previously litigated in this docket) was granted and the matter proceeded to an evidentiary hearing.

Document X was produced by AI in the course of discovery pursuant to the terms of a confidentiality agreement. It was marked for identification at the hearing as Covad Cross-Exhibit No. 5 ("Exhibit 5")

During the in camera cross-examination of AI witness Hamilton on May 22, 2001, Covad presented the witness with a copy of Exhibit 5 and questioned him on certain aspects of that document. At the close of this line of cross-examination, Covad moved for the admission of Exhibit 5 into the record. It was admitted.

AT&T, however, further asked that both the in camera testimony by Mr. Hamilton and Exhibit 5 be entered into the public record. AI objected. The Hearing Examiners deferred ruling on the request until the parties filed written arguments on the matter.

On March 25, 2001, AT&T and Covad filed a Joint Statement and AI filed an Opposition. AT&T and Covad argued for public disclosure of the in camera proceeding and Exhibit 5 based on what they believed the evidence showed. They, however, did not include any references to the particulars of Mr. Hamilton's testimony. In anticipation of AT&T's suggestion that Exhibit 5 reveals some improper conduct on the part of the Company, AI asserted that both the testimony of Mr. Hamilton and the copies of manual loop reports it was submitting, proved such assumptions to be wrong.

The Hearing Examiners recognized that, without doubt, both Exhibit 5 and the testimony of Mr. Hamilton were in the record of this proceeding. In their view, it would be necessary to carefully scrutinize the document together with the hearing transcripts (as yet unavailable) in order to make a final ruling. Hence, we considered it appropriate to maintain the status quo, noting that at this point in time no party would be prejudiced from setting out their positions on any matters whatsoever.

Recommendation:

At issue on this Interlocutory Review is the Hearing Examiners' Ruling of May 29, 2001 which states, in full, that:

Notice is hereby given that at this juncture, the AT&T and Covad objection to the confidential status afforded Covad Cross Exhibit 5 and the cross-examination related thereto, is overruled. In other words, no public disclosure is authorized at this time. The Hearing Examiners, however, reserve the right to alter their decision upon complete review of the record and the arguments presented in the parties' confidential briefs.

The above quoted ruling shows that the Petition for Interlocutory Review is premature and serves no purpose at this time. The Hearing Examiners are diligently

working on a Proposed Order for this case and are reviewing the record in great detail. It is only on the basis of such an intimate review that they will be able to finalize a ruling on whether the confidentiality status of the document and the testimony in question should be changed. We are not yet finished with the task.

On the basis of the foregoing, the instant Petition for Interlocutory Review should be denied.

EM/LH:jt